App. F. IX-4

1928-29 (Jud)

File No. 310-28

Serial Nos. 1

*Previous References*
562-20 Sel 1-20
42-03
269-16
534-15
604-19
553-20

*Later References* 71-23 Sel 1-7
761-22
180-27 Sel 1-5

Mag 10-29-1-9
8-33-1-2

# General and Revenue Secretariat.

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*Serial Nos.* 1

**Part B for** Feb 29

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SUBJECT

Resumption and restoration of the inam Village of Thathachi Village endowed to Sri Avanimulat.

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To

The Jud Comr
No 1736 of 25-2-29

Fids Copy of the Legal Remembrancers opinion the matter and requests him to take prompt steps resuming the inam lands & restore them to the Mutt & report the action taken

General Secretariat. Revenue

Muz File No 310 of 1928-29

Serial No

A
B

Attention is invited to para 18 of the notes in File No. Muz. 150-27 Serials 6 to 10 and the point referred to therein is discussed in this note.

The ~~perm~~ perpetual lease of an inam land endowed to a religious or charitable institution has all along been held to be against public policy and it has been declared that such a lease amounts to an alienation. The lease now under discussion was allowed on 15th January 1892 and on two occasions - in March 1905 and in October 1922 - indirectly on the first and directly on the second, Government have approved of the arrangement. The approval itself was entirely based upon the assumption that the conditions of the lease were fair and equitable.

I am not sure if this assumption is correct. The important condition in the lease is that the annual gutta to be ~~max~~ paid by the lessee to the lessor is a fixed sum of ₹ 400/- for all time. Can it be contended that a fixed sum will be fair to the Mutt in perpetuity Theprice of agricultural prooucts has a ~~y~~ general tendency to rise and a fixed cash payment would represent a steadily diminishing real return to the Mutt. It seems to me

that

WD 0821—GPB—60 000—24 5 27

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that the limitation of agricultural income to a fixed cash payment for all time is an arrangement unfair to the lessor and unduly indulgent to the lessee.

It must be remembered the land the lease of which is under consideration, is an inam land endowed to the Mutt. Only jodi an cesses are collected in respect of it and no full assessment. The land is not subject to periodical revision of assessment by Government and when only a fixed cash gutta is paid to the institution, the entire benefit of improvement by way of rise of prices and otherwise, is appropriated by the lessee to the exclusion of both Government and the institution. Where is the justification in such circumstances to treat the land as inam at all?

As the case now stands, the grant made to a religious institution at the expense of public revenues is permitted to be enjoyed by a private person subject only to contributing a limited and perpetually fixed share to the institution. The object of the grant is thus entirely frustrated and I think public policy requires that this position should not be permitted.

NOTE—Contn sheet

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As stated above, directly and indirectly Government have conveyed approval to this arrangement of a perpetual lease but it has based upon an assumption which is obviously incorrect. Whether, in these circumstances, it is not open to Government to declare that the transaction amounts to an alienation, is point which requires serious consideration. In this connection, particular attention is invited to the opinion expressed by the Government Advocate on 3rd August 1922. This opinion again is based upon the assumption that the condition of a fixed gutta for all time is fair and equitable. As already stated, this condition cannot, by any means, be held to be reasonable.

(5?? -2?)

This is a case of diversion of the inam grant from its object for which provision was made in Rule II of the Rules sanctioned in the Chief Commissioner's No. 266 dated 17th November 1877. This Rule is incorporated in Section 30 of the Religious & Charitable Institutions Regulation which deals with alienation of inam lands by the Heads of Mutts. Any alienation to be held valid should have been made with the previous sanction of Government No such sanction was obtained in this case an

NOTE.—Contn sheet

the

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the transaction should be held to be null and void according to this Section.

Whether With the subsequent approval of Gover ment and that, based upon an assumption which cannot be claimed to be correct, operates as an estoppal, and whether in view of all the circumstances of the case, it is not now open to Government to take action according to the procedure laid down in the second sub-para of Section 30 of the Religious and Charitable In stitutions Regulation, are points to be considered. The orders passed in 1905 and 1922 are only executive orders and ~~are~~ I do not think they can contravene the Rule against per petual leases which was and is a provision of law.

There is now a new Swami at the Head of the Mutt. I believe a Mattadhipathi is not competent to create any interest in respect of his Mutt property to endure beyond his life. It may therefore be open to the new Swami to repudiate the perpetual lease transaction allowed by one of his predecessors.

The opinion of the Legal Remembrancer is requested on the question raised above. The procedure to be followed for cancelling the perpetual lease may be indicated. May the

NOTE—Contn. sheet

procedure

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procedure provided for in Section 30 of the Regulation be enforced? Is it necessary for the Swami to disown the transaction of his predecessor before any action for restoration of the inam village is taken? Is any intervention of the Civil Court necessary?

To L. R with Compliments.

No opinions on the points raised and contained in the typed note put up herewith.

15 FEB. 1[illegible] 3299

With Compliments.

5003

O P I N I O N.

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In this case the permanent lease is dated 15 January 1892. Within about a year afterwards i.e. in 1893 Shanbhoguc Sripathiah, one of the deciples of the Mutt, complained to the Government that the jodi village of Thatahally endowed to the Sri Avani Mutt had been leased out in perpetuity illegally and prayed that the village may be taken under Goverament management. After a period of ne 12 years an endorsement was issued by Government t the Shanbhog in 1905 stating that as the condition of the lease were reported to be fair and equitabl considering the amount spent on improving the lan Government were not prepared to interfere in the matter.

2. It may be that at the time the conditions of the lease were considered to be fair and equitable view of the amounts said to have been spent for improvements. This endorsement shows that Goverm considered that it would work as a hardship on the lessee if the village was to be resumed. But more than a quarter of a century has now elapsed and th same considerations cannot be said to be applicabl now since the lessee was given sufficient opportun to enjoy the village in question and recoup the mo spent on improvements. It has to be pointed out th according to the terms of this endorsement, Goverm have not committed themselves to any statement re ing their future action with respect to the aliena- tion, and there is nothing to preclude them f. reconsidering the question. Again, there is another aspect of the question which seems to be in favour Government. This endorsement has been issued only to the Shanbhog who is a deciple of the Mutt and no

to the lessee. Hence, the Government cannot be deemed ~~do not seem~~ to have given any sort of assurance to the lessee that they will not reconsider the question in future under any circumstances.

3. As regards the opinion of the Government Advocate (Flag V) it has to be pointed out that he admits in para 62 that the endorsement does not lay down that the perpetual lease was not an alienation. But he adds "that it may be taken to have the effect of according sanction of Government to the lease in question." In the first place, the endorsement does not show that the Government considered or decided the question whether the perpetual lease did or did not amount to an alienation. In the next place, there is nothing to show that the previous Swamy applied to the Government for sanction to alienate the village or that they subsequently consented to the alienation of the same. All that can be said is that the fact of the alienation was brought to the notice of Government and that they did not resume the village on the ground that the conditions of the lease were considered to be fair and equitable. It appears to me that it was not a final decision between the Government on the one hand and the lessee on the other, and that the Government did not in any manner bind themselves not to reconsider the question in future under any circumstances. Hence I am not prepared to accept the proposition that the endorsement given to the Shanbhog, to which the lessee was certainly not a party, had the effect of according sanction of Government to the perpetual lease which was manifestly illegal according to the rules of 1877.

4. This is a case which does not involve any question of limitation and the fact that the Government did not resume the village in 1905 cannot be interpreted to mean that they are precluded from

resuming it at any time after on proper grounds. Since the endorsement of 1905 was addressed to a third party, and since Government had not given any assurance to the lessee that they will never interfere with his enjoyment of the village in future no question of estoppel seems to arise as suggested by the Government Advocate in para 62. Besides, the nature of the contentions which the lessee was likely to raise or the difficulties which were likely to arise for decision have not been disclosed in the opinion of the Government advocate, and Govt need not be deterred by considerations of this sort from reconsidering the case if they think that such unknown contentions or difficulties have arisen or are likely to arise (illegible)

Though there were grounds to enable the Government to re-examine the question in 1922 they omitted to do so and restored the Kodi village to the lessee. According to the G. O. of 1922 (Flag B) the decision is merely based on the endorsement of 1905 and cannot be said to be a decision on merits. Nor is there anything in the G. O. of 1922 to preclude the Government from reconsidering the case at any future time.

57. The law applicable to the case in question is contained in the rules embodied in the Chief Commissioner's Notification No.32 dated 17th November 1877. It is important to bear in mind that these rules were in force in 1893, in 1905 and in 1922, and are still in force at the present moment. They are included in the Schedule to the Mysore Treaty of 1913 as having the force of law. The rules took place in the Miscellaneous Enactments in force in Mysore and published under the authority of Government in 1925. They are also incorporated in the Revenue Manual as well as the Karnataka Code. In the Government of India publication of rules

enactments in force in Mysore the Notification of 1877 is still shown as having the force of law. Besides, under Article 18 of the Mysore Treaty it is provided that all laws and rules having the force of law which existed at the time of the rendition of 1881 ~~xx~~ and are shown in the schedule annexed thereto, should be maintained and efficiently administered and should not be repealed or modified except with the previous sanction of the Governor General in Council. Since these rules have not at all been repealed or modified since 1877, the Government all along possessed the right of resuming the village in question under the said rules. The fact that they did not exercise this right either in 1905 or in 1922 is not an argument against the exercise of the said right, now if they deem fit to do so.

6. It is now settled law in British India that the Manager or trustee of a temple or Mahanth of a mutt has no power to sell or mortgage the endowed lands except in the case of unavoidable necessity, and that it is not binding upon his successors. As a result of the decided cases in British India, it has been held that a permanent lease will ensure only for the grant ~~of~~ on life time and that the tenant in his turn acquires a right similarly limited. If the successor allows the tenant to continue in possession and receive rent from him during his life time the tenancy which is created will be ~~xx~~ a new tenancy created by himself for his life time. It is therefore within the powers of every successor to continue the tenancy during his life time and consequently the possession of the tenant never becomes adverse to the successor or the ~~xxxxxx~~ last person. (10 Mysore Law Journal p.295 at p.305 and 306). The Chief Court have also observed in the above decision that the position assigned to the head of a mutt in

British India in relation to the properties belonging to the Mutt are not quite applicable to the Matadipathies in the Mysore State where the alienation made by them are governed by the rules of 1877. Under these rules the question of limitation or adverse possession does not arise and the Government have extensive powers to set aside the alienations and resume the inam lands if they think fit to do so. The procedure to be followed by Government is contained in the rules themselves. As per rule these rules a notice has to be issued to the alienee requiring him to restore the village to the Mutt within six months from the date of the service of the notice, and in default or compliance the village is liable to be summarily resumed and restored to the Mutt by Revenue authorities. Section 30 of Regulation VII of 1907 seems to be a copy of the rules of 1877 and also provides the same procedure to be followed with respect to inam villages in question.

As regards the present Swamy, it can also be pointed out that he is not at all a party to the perpetual lease and it is for the lessee to say how it can be binding on him also. It is open to the present Swamy to complain to the Government about the illegality of the alienation by his predecessor in office and to move Government to take necessary action to resume the village and restore it to the Mutt. The intervention of the Civil Court is not necessary and is not also desirable.

In a very recent decision of the Mysore Chief Court in which the judgment was pronounced

7th September 1928, the Chief Court have observed that in the case of temple lands, the presumption is against the existence of a permanent tenancy according to the decision in 28 Mysore Chief Court Reports page 199. They ~~may~~ have also held that the Government were justified in having ~~re~~assumed the lands which had been alienated since 1855, under the rules of 1877.

Mahadevappa

14.2.29

I have communicate this opinion to the M.C. and I must ask to take very prompt action on the lines indicated in paras 5 and 7 & may be asked to report the action taken to enforce the decree etc. The matter will be obtained from the Asst Commr for the rent

Serial No.

The dft approved by the Assistant Secretary, is placed on the file

Orders solicited as to whether the Dft. may be submitted to the Dewan also before issue, as it is proposed to modify an order passed by the previous member of Council. (Vide mag F. 562-20)

Submitted

AV 28-2-25.

Dewan

OFFICE

No 3531

1. To. Mess[illegible]

No 1736 dt 25-2-25.

forwarding a copy of the Legal Remembrancer's [illegible] in the matter [illegible] to take prompt [illegible] securing the [illegible]

B

endix F G–1

BJECT..... ..... ..... ..... ..... .....

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Diary No. of letter replied to.. .. .....768..... . ..

Section Rev. /

File No. 310

Serial No. 1919

No. 1736 Revenue

file of 5/prg

General and Revenue Secretariat

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192

To

.....The.....Dy. C.....

Date of issue .....28/9/23.....

28th

Signed by .. ..... .....

Sir,

Adverting to the margin
noted comms from this of
Sanctioning the re Straha
to Rama Jummarthi
the Jodi Village of Jatakalla
in the Sidlaghatta Taluk
endowed to Sri Anjaneya
I am directed to forward
herewith a copy of Legal
Remembrancer's opinion dt
14.2.25 in the matter,
and to request you to take
over

cmo no. 3375–Mug 42–03
3.1905 to D.C. Kolar
and
G.O. no 1576–17 Mug.
20–15 dt 12.10.1922.
(b)

ist of enclosures . ..... ..... ..... . .....

Copied by..... ..... .. ..... ..... .....

Examined by.....

very prompt action to resume
the village main lands in
question on the lines indicated
in paras 6 and 7 of the above note
report the action taken for
restoring the main village
to the malls, and for obtaining town
it the best income possible
for the malls.

I have etc

D(A) for [illegible]